

NOV 25 2002

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Federal Communications Commission  
Office of the Secretary

In the Matter of:

Petition for Reconsideration  
by the Whiteville City

School System from the  
Decision of the Commission

Adopted October 25, 2002

FCC Docket Nos. 96-45 and 97-21

1. PETITION FOR RECONSIDERATION

Petitioner: Whiteville North Carolina City Schools  
Billed Entity Number: 162994  
Application Number: 178479  
FRN: 360428

CC: 96-45

STATEMENT OF PARTY'S INTEREST

The Whiteville City School System in a letter dated May 4, 2001 from the Schools and Libraries Division was notified that its funding request number 360527 had been approved in full and that its funding request number 360428 had only been partially approved. The school system on May 31, 2001, appealed to the Federal Communications Commission (Commission) solely on funding request number 360428 that was partially approved. The Commission upheld the decision in an order adopted October 25, 2002, by Deputy chief Mark G. Selfert. It is from this order that the school system appeals and petitions for reconsideration.

STATEMENT OF FACTS

The Whiteville City School System is a small rural system located in Columbus County, North Carolina, which is in the very most southeastern part of North Carolina. It is a low wealth school system and the total student enrollment is 2,752 with 1,621 students being eligible for free or reduced lunches which equals to 59% of the student body being eligible. The student body is 54% Caucasian and 46% African American.

FACSIMILE TRANSMITTAL FORM

No. of Copies rec'd  
LIST ABOVE

DATE: 11-25-02

THIS FACSIMILE IS BEING SENT BY:

DON W. VIETS JR.  
ATTORNEY AT LAW  
107 JEFFERSON STREET  
WHITEVILLE, NC 28472

FAX NO.: (910) 642-8977  
PHONE NO.: (910) 642-7019

916

appear to be a small amount but when considering the school system is a low wealth school system and both local and state funding have been reduced, it is an amount that the school system urgently needs.

For the Funding Year 2000, the school system chose to receive telephone service under the State Master Contract. Under this contract the billed entity for this service is the North Carolina Department of Commerce-Information Technology Services (ITS) and the provider is Sprint Telecommunications, d/b/a Carolina Telephone and Telegraph Company. The State Master Contract was entered into December 18, 1996, with an expiration date of 48 months thereafter and the contract is attached hereto as Exhibit No. 1.

In the Commission's order, Deputy Chief Mark G. Seifert addressed two issues in deciding whether or not the school system's funding request would be approved for the funding year 2000.

The first issue addressed was whether or not the school system was exempt from the competitive bidding requirements for the life of the contract. On page 5 of the decision Deputy Chief Seifert in paragraph 8 correctly concluded the school system was exempt from the competitive bidding requirement as the contract was entered into on or before July 10, 1997.

The second issue addressed was whether or not the contract ended on December 18, 2000, which was prior to the end of the funding year 2000 or ended on June 30, 2001, which was the end of the funding year 2000. The decision in paragraph 8 ruled that the contract ended 48 months after December 18, 1996 which would be December 18, 2000 and the fact the contract provided for automatic monthly extension in paragraph 4.D. would not make the contract extend through June 30, 2001. The commission therefore

~~\_\_\_\_\_ would have~~

This partial approval **applied** only to funding request number 360428 and it is from this decision that the school system petitions for reconsideration.

## I. PETITION FOR RECONSIDERATION

### ISSUES PRESENTED

1. Whether the **decision** was based upon facts which relate to events which have changed since the last opportunity to present matter to the Commission?

2. Whether the decision was based upon facts unknown to the petitioner until after the request for review was filed and which could not, through the exercise of ordinary diligence, have been learned prior to that time?

### CONTENTIONS

It is the school system's understanding that a petition for reconsideration will generally be granted only if the decision from which it is appealing was based upon **errors** which would be included under Issues 1 and 2 set out above.

A6 shown by Exhibit No. 2 attached hereto, the school system on May 31, 2001, through Ms. Patricia L. Hedlin, Director of Technology, requested its first review by the Commission of the decision by the School and Libraries Division allowing Only partial funding for funding request number **360428** for funding program year 2000. As shown in the statement of relevant, material facts in its request for review, the only contract the school system knew of at that time was the original State Master Contract which is Exhibit No. 1 attached hereto,

The next correspondence received by the school system from the Commission was Deputy Chief Selfert's decision where it upheld the decision allowing only partial approval for funding request number **360428**. This decision was received by the school system on November 5, 2002.

— Hedlin

decision she telephoned Ms. Nancy Atkins who is with ITS for the State of North Carolina. This telephone conversation was on November 20, 2002, and it was then that Ms. Patricia Hedlin first learned that an addendum to the original State Master Contract had in fact been signed by the State of North Carolina on January 10, 2000 and by Carolina Telephone and Telegraph Company on February 15, 2000. This addendum extended the expiration date of the original State Master Contract from December 2000 to June 30, 2001. The reason for the extension was to allow the contract to expire coterminous with the end of the fiscal year of the E-rate program with this intention set out in a memorandum from ITS dated January 12, 2000. That the addendum to the contract and memorandum are attached hereto as Exhibit No. 4.

That during this same telephone conversation as shown by the affidavit of Ms. Patricia Medlin, she learned that once the addendum was executed it was not properly circulated to the employees of ITS involved in the E-rate program and as a result the school system did not know of this addendum. She further learned that a copy of the addendum had not even been forwarded to the Commission.

The school system would contend that the Commission through no fault of its own issued a decision in error as its decision did not address the unknown fact the State Master Contract had been amended to provide an expiration date of June 30, 2001. Under Issue 1 set out above, knowledge of this fact was only made known to the school system since its last opportunity to present any matters to the Commission and has drastically changed the material facts in this case.

Under Issue 2 the school system would also contend that the addendum to the contract which was unknown to it until November 20, 2002, could not, through the exercise of ordinary diligence, have been learned prior to the last request for review. As the attached affidavit indicates, the school system was never notified of the addendum to the contract and neither were employees of ITS who were involved in the E-rate funding nor the Commission itself. This addendum certainly constitutes facts

that were unknown to the school system until after it filed its last request. The school system did exercise due and ordinary diligence as it constantly contacted ITS to make sure it had all necessary documents and relevant information for its appeal. (See Patricia Medlin's affidavit attached as Exhibit No. 4)

RELIEF SOUGHT

The school system would contend that the requirements of both Issues 1 and 2 have been met and the order of the Commission by Deputy Chief Mark G. Seifert should be reconsidered and the funding request number 360428 should be fully approved. The school system would note again that it is fully aware the Commission's decision was based upon what facts it had at the time of the decision and the Commission did not have the benefit of considering the addendum to the contract. This certainly was not the fault of either the school system or the Commission.

This the 22nd day of November, 2002.


  
\_\_\_\_\_  
DON W. VIETS, JR.  
ATTORNEY FOR THE WHITEVILLE CITY  
BOARD OF EDUCATION  
107 JEFFERSON STREET  
WHITEVILLE, NC 28472  
(910) 642-7019

EXHIBIT #I

STATE MASTER CONTRACT WITH **CAROLINA**  
TELEPHONE AND TELEGRAPH COMPANY

COPY

NCGOV.DOC  
01/03/97

CONTRACT NO. 961218-A

**AGREEMENT FOR  
DIGITAL CENTREX SERVICES NORTH CAROLINA STATE GOVERNMENT**

This Agreement, made the 18 day of December, 1996, between Carolina Telephone and Telegraph Company, hereinafter referred to as "COMPANY", and North Carolina State Government hereinafter referred to as "CUSTOMER".

**WITNESSETH:**

WHEREAS, CUSTOMER now desires to lease DIGITAL CENTREX SERVICE; and WHEREAS, COMPANY is desirous of leasing to CUSTOMER and CUSTOMER is desirous of leasing from COMPANY all that DIGITAL CENTREX SERVICE enumerated in Paragraph 1 of this Agreement and upon the terms and conditions provided herein.

NOW THEREFORE, in consideration of the foregoing recitals and mutual promises, covenants, and agreements contained herein, and with the intent to be legally bound hereby, the parties agree as follows:

1. **DIGITAL CENTREX SERVICE AND RATES** - COMPANY hereby leases to CUSTOMER certain telephone exchange service as described in the COMPANY'S Special Service Arrangement Tariffs filed with the North Carolina Utilities Commission at the rates set forth therein ("Special Service Arrangements"). A listing of the Digital Centrex Service and charges are detailed in Exhibit A. Exhibit A is attached hereto and incorporated by reference as if fully set forth herein.

2. **INSTALLATION** -

A. CUSTOMER agrees to obtain all necessary consents to install the Digital Centrex Service from any third parties having an interest in the installation site. CUSTOMER agrees to furnish and place, at its expense, any necessary conduits and electrical current required to operate the Digital Centrex Service. CUSTOMER shall, at its expense, provide necessary openings and ducts for cable and conductors in floors and walls with a floor plan and/or prints showing the location of such. The floor plan and/or prints will also show the locations and types of instruments to be installed. It is understood that any changes in instrument types or locations may change the quoted price. Such additional charges will be based on time and material costs incurred by the COMPANY.

B. The COMPANY shall not be responsible for damages to the premises not resulting from the COMPANY'S, its agent's or subcontractor's negligence or willful misconduct.

C. Except as specified in 4.B, below, if prior to the installation of the Digital Centrex Service, CUSTOMER should for any reason cancel the order for the Digital Centrex Service, or if for any reason not substantially attributable to the fault of the COMPANY or its suppliers, the Digital Centrex Service is not installed by the COMPANY, CUSTOMER shall pay to the COMPANY reasonable allowance for loss of investment as determined by current tariff rates and charges for labor and materials associated with specific Central Office and/or Outside Plant Construction.

3. **TITLE** - The title to the aforesaid described Digital Centrex Service shall remain in the COMPANY, the CUSTOMER having only the right to the use thereof during the term of the Agreement.

4. **TERM** - The initial term of the Agreement of said Digital Centrex Service shall commence on the date service is established for said Digital Centrex Service (as stated in Exhibit B) and end 48 months from that date with the following additional conditions:

A. The North Carolina State Government Office of State Controller (NCSG-OSC) is the sole provider of the services to the authorized users and is the only authorized agent who can order, facilitate, bill and provide these services to NCTH authorized users' sites in accordance with the provisions of the Tariff and the North Carolina General Statutes.

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Fax: 919-981-5027

NCSG/OSC

B. The State's obligation to pay any amount due is contingent upon the availability and continuation of funds and receipts to the Office of the State Controller and authorized users for the service described herein. The State and authorized users agree to use their best efforts to obtain funding and in the event that funds are unavailable by an authorized user of the service, the State may terminate the service without incurring any liability whatsoever. The State will provide thirty (30) days prior written notice of any termination of service to any authorized user. Authorized users are defined by GS & 143B-39(14) and (15) and GS & 147-64, a(4).

C. Should CUSTOMER decide to terminate this Agreement prior to the end of the full term, CUSTOMER agrees to give COMPANY not less than thirty (30) days prior written notice of the termination. CUSTOMER agrees to pay COMPANY, within thirty (30) days of termination of the Agreement, Termination Charges except as specified in (B) above. Termination charges will be determined by taking the sum of "Basic Network Access" charges and "Network Usage" charges due as follows:

Basic Network Access: Multiply the monthly rate by the months remaining on the Agreement by 90% of the highest attained number of working authorized sites (determined as of December 31 of each year).

Network Usage: Multiply the usage rate by the highest monthly level of usage in the preceding twelve (12) months by 90% of the number of months remaining on the Agreement.

Notwithstanding the foregoing, such termination charges shall not exceed the actual costs incurred by the COMPANY to provide the services set forth in this Agreement.

D. This Agreement will be automatically renewed and extended on a month to month basis from the referenced termination date, unless either party gives written notice to the other of an intention to terminate the Agreement at the expiration of the then current term. Such notice is to be given not less than thirty (30) days prior to the expiration of the then current term.

E. Except as specified in 4.B above, termination liabilities under this Agreement apply for the entire term of this Agreement, including all renewals and extensions thereto.

5. DEFAULT IN RENT - If CUSTOMER should fail to pay the Service Connection Charge or any monthly rental payment, COMPANY, at its option, may, by notice to CUSTOMER, declare the entire unpaid rental and other sums payable by CUSTOMER hereunder to be immediately due and payable.

6. CONTRACT ASSIGNMENT - CUSTOMER shall not sell, assign, encumber or grant any security interest in any of the Digital Centrex Service to any person or entity whatsoever, except upon written consent of COMPANY thereto.

7. TARIFFS - COMPANY agrees to provide a Standard Pricing Schedule by March 1, 1997 for North Carolina State Government within the State of North Carolina for Digital Centrex Services that are provided within the COMPANY'S operating Central Office Areas. When the Standard Pricing Schedule has been developed and approved by the North Carolina Utilities Commission the COMPANY will notify the CUSTOMER the Standard Pricing Schedule is available and the CUSTOMER has the right to change the Digital Centrex Service provided under this Agreement to the new Plan without any termination charges. If CUSTOMER does not elect to change to the new Plan the terms and conditions of this Agreement will apply. In the event that the terms of this Agreement conflict with tariff provisions, the Agreement language shall control.



8. **LIMITATION OF LIABILITY** - CUSTOMER agrees that the COMPANY shall not be liable to CUSTOMER for any loss, claim, demand, liability, cost, damage or expense of any kind, caused, directly or indirectly, by any service provided herein or by any inadequacy thereof for any purpose. COMPANY shall have no liability resulting from use of the Digital Centrex Service in connection with life support devices or emergency services, including, but not limited to, 911 service.

9. **ASBESTOS** - The COMPANY shall be responsible for contacting the owner of any premise in which work is to be performed under this Agreement to determine whether asbestos containing materials (ACM) and/or presumed asbestos containing materials (PACM) are located in said premise. Once the existence of ACM or PACM has been identified, it shall be COMPANY'S sole responsibility to take necessary special precautions and actions to protect its employees, subcontractors, the general public, and the premise and structure from exposure to asbestos while performing any work under this Agreement. If the COMPANY determines that it will practice avoidance of premise areas suspected of containing asbestos (whether encapsulated or not), the CUSTOMER agrees to allow an adjustment to the price of this Agreement to reflect the COMPANY'S total avoidance of areas where suspected ACM or PACM may be located. However, should the COMPANY not practice total avoidance, it shall be the COMPANY'S sole responsibility to comply all applicable laws, rules, regulations and guidelines relating to the existence of or exposure to ACM or PACM.

10. **REMOTE ACCESS** - CUSTOMER acknowledges that certain premise equipment contains a remote access feature that enables callers to access the equipment from remote locations. COMPANY makes no warranty regarding this feature. Any charges resulting from unauthorized access shall be the responsibility of the CUSTOMER.

11. **GENERAL PROVISIONS**

A. **NON-WAIVER** - COMPANY'S failure to enforce strict performance by CUSTOMER of terms he shall not be construed as a waiver of any terms contained herein.

B. **BENEFITS** - This Agreement shall be binding upon and inure to the benefit of the parties hereto and all of their personal representatives, successors and assigns, and any assignees for the benefit of creditors, trust or receivers in bankruptcy or insolvency.

C. **REVIEW AND APPROVAL** - This Agreement is subject to the review and approval of the North Carolina Utilities Commission and if for any reason the Agreement is not approved and has to be canceled, COMPANY will not be liable for any loss, claim, demand, liability, cost, damage or expense of any kind the CUSTOMER has or claims to have associated with signing this Agreement.

D. **RATES, CHARGES AND REGULATIONS** - All rates, charges and regulations specified herein as in addition to all other appropriate charges and regulations specified in Section 5 and 12 of the North Carolina General Subscriber Services Tariff will apply to this Agreement.

E. **ENTIRE AGREEMENT** - Digital Centrex Service enumerated in Paragraph 1, and no representation or understanding not contained herein shall be binding upon the parties.

F. **NEW PRODUCTS & DIGITAL CENTREX ENHANCEMENTS** - COMPANY agrees to provide CUSTOMER with a new product update and a Digital Centrex Product review by holding joint planning sessions from time to time. This review will allow the CUSTOMER to see what new products are available while reviewing the CUSTOMER'S Digital Centrex Services for future enhancements and/or changes. CUSTOMER and COMPANY may subsequently negotiate and agree to other terms and conditions.

G. NOTICE - Any termination notice shall not be deemed to have been given unless in writing sent postage prepaid to and received by the other party addressed as follows:

TO CUSTOMER: North Carolina State Government  
Director State Telecommunication Services  
3700 Wake Forest Road  
Raleigh, North Carolina 27609

TO COMPANY: Sprint Mid-Atlantic Telecom, Inc.  
CONTRACT ADMINISTRATION  
3261 Atlantic Avenue, Suite 200  
Raleigh, North Carolina 27604

The parties have heretofore executed this Agreement by their duly authorized representatives as of the day and year first above written.

CUSTOMER

CUSTOMER NAME: NORTH CAROLINA STATE GOVERNMENT

SIGNATURE: 

PRINT NAME: Edward Renfrow

TITLE: state Controller

COMPANY

COMPANY NAME: CAROLINA TELEPHONE AND TELEGRAPH COMPANY

SIGNATURE: 

PRINT NAME: Walt Vernen

TITLE: Director of Marketing Operations



**EXHIBIT #2**

**REQUEST FOR REVIEW DATED MAY 31,2001**

**BY PATRICIA MEDLIN**

[u]

**Before the  
Federal Communications Commission  
Washington DC 20554**

**In the Matter of**

<b>Request for Review by the</b>	)	
<b>North Carolina Department of Commerce-SIPS</b>	)	<b>FCC Docket No. 9645</b>
<b>Whiteville City Schools</b>	)	<b>FCC Docket No. 97-21</b>
<b>Of Decision of the Universal Service</b>	)	
<b>Administrator for Program Year 3</b>	)	

**Applicant:**    **North Carolina Department of Commerce-SIPS**  
                  **Whiteville North Carolina City Schools**  
                  **Billed Entity Number:**        **I62994**  
                  **Application Number**        **170479**  
                  **FRN**                                **360420**

**Summary**

The Whiteville City Schools ("the Applicant") respectfully asks the Federal Communications Commission ("FCC") to review the decision of the Universal Service Administrator for E Rate program year 3, 2000-2001, which denied part of our applications for E Rate discounts for voice telephone service. The SLD denied part of our application because it said we had not provided sufficient documentation to support the contract through the end of Funding Year 3.

The Applicant believes that it has correctly followed the Administrative Rules for this program. To the extent that the SLD or the FCC believes that it did not, the Applicant respectfully shows the FCC that there was never any intent to defraud, misrepresent or work in bad faith against any of the Ruler of the Program. Further failure to get the total amount of E Rate discount for Year 3 is a hardship for the Whiteville City Schools.

We respectfully ask that the FCC review the evidence presented in this case, review the SLD's decision in this matter and allow the Whiteville, North Carolina City Schools to receive its E Rate discount for Funding Year 3 for telecommunications services.

**Statement of Interest**

The Applicant is the public school system for Whiteville, North Carolina. Whiteville is the County Seat for Columbus County, North Carolina in the southeastern part of the State. Using 1990 census data, 9.1% of county residents are college graduates and 59.4% are high school graduates. The county's average SAT combined scores for verbal and math in 2000 was 872. The annual unemployment rate for 2000 averaged 10.6%.

For Funding Year 3, July 1, 2000 through June 30, 2001, the Applicant chose the State Master Contract for voice telecommunications service. The billed entity for this service is the North Carolina Department of Commerce - SIPS. The Applicant's request for E rate funding of voice telephone service provided by the State Master Contract was partially denied by the SLD.

The State of North Carolina and Whiteville City Schools are currently in a budget emergency. Loss of the E Rate discount for the Whiteville City Schools is very serious for both the County School System and the State. The amount of the above-lined FRN for telecommunications service that was denied by the SLD is approximately \$8,731.

#### Statement of Relevant, Material Facts

- For Funding Year 3, the Applicant chose to get telephone service from the State Master Contract. It filed a Form 471 (Attachment 2) indicating that choice and included several FRNs for voice telephone service of which PRN 360428 was one.
- In its Funding Commitment Decision Letter, the SLD indicated that funding was denied for FRN 360428 with Sprint telephone because the "The 470 cited did not include service of this type, therefore it does not meet the 28 day competitive bidding requirement."
- The Applicant realized it had cited the wrong Form 470 when it applied and corrected the Form 470 number to the correct one. The correct Form 470 is Attachment 1. Attachment 1 also includes the letter the Applicant sent to the SLD correcting the Form 470 number.
- The Applicant appealed the decision of the SLD to the Universal Service Administrator. The result of that appeal was a partial denial of the requested amount. In denying part of the request, the Administrator stated, "Your appeal letter cited mother Form 470 for this funding request. This request is for telecommunications service that was contracted on 12/18/1996 and expired 12/18/2000. You have not proven that a contract was signed extending this service through the full funding year. Therefore this funding request will cover the six months convacted service and your appeal is partially approved."
- The underlying carrier for the State Master Contract from which the Applicant buys voice telephone service is Sprint Telecommunications Services doing business as Carolina Telephone Service. The State Master Contract with Sprint/Carolina Telephone was signed on December 18, 1996 to be effective when service was established pursuant to the contract. The contract is a multi-year contract. Our understanding is that under the rules for the E Rate program, a contract signed on or before July 10, 1997, is exempt from the competitive bid requirements for the life of the contract.
- 47 CFR S4.511 (c)(i) provides "A contract signed on or before July 10, 1997 is exempt from the competitive bid requirements for the life of the contract; ..." That section of the FCC regulations further provides at (d)(1), "the exemption from the competitive bid requirements set forth in paragraph (c) of this section shall not apply to voluntary extensions or renewals of existing contracts..." (Emphasis added.)
- The contract in question (Attachment 3) provides at Section 4 that the term of the contract shall be 48 months from the date that service is established. Further, at 4(D) the contract provider.

This Agreement will be automatically renewed and extended on month to month basis from the referenced termination date, unless either party gives written notice to the other of an intention to terminate the agreement at the expiration of the then current terms. Such notice is to be given not less than thirty (30) days prior to the expiration of the then current terms. (Emphasis added)

- Our position is that by its own terms, the contract continues until such time as either party provides notice of termination to the other party with 30 days notice. The contract has no provision for amendments.
- I am informed that under North Carolina law, where the language of the contract is plain and unambiguous, the construction of the agreement is a matter of law: a reviewing court may not ignore or delete any of its provisions, nor insert words into it, but must construe the contract as written. Minor v. Minor, 76, 79, 318 S.E.2d 865, 867, disc. rev. denied, 312 N.C. 495, 322 S.E.2d 558 (1984) Contracts are construed according to the intent of the parties, and in the absence of ambiguity, a court construes them by the plain, ordinary and accepted meaning of the language used. Integon General Ins. Corp. v. Universal Underwriters Ins. Co., 100 N.C. App. 64, 68, 394 S.E.2d 209, 211 (1990) (Emphasis added)
- The plain, ordinary and accepted meaning of "automatic" is "largely or wholly involuntary," Merriam-Webster's Collegiate Dictionary. This is not the plain, ordinary and accepted meaning of the word "voluntary." The plain, ordinary and accepted meaning of "voluntary" is proceeding from the will or from one's own choice or consent. Id.
- The contractual term is not involuntary extension of the contract but an automatic one. The contract continues until someone cancels it.
- The Applicant understands that the FCC and the SLD want to assure themselves that there is some movement toward competition in local telephone service. Both may be interested in knowing that the State of North Carolina is in the midst of a large competitive procurement process, which was not finished in December 2000 but is anticipated to be done by the beginning of Year 4 of the E Rate program. The State has filed a Form 470 for this procurement, and that Form 470 has been posted to the SLD web site.
- It is the position of the Applicant that the contract has not been terminated and thus is still in effect from its original signing. It is further the position of the Applicant that the contract has not been terminated because the competitive bidding process for the new contract is not yet finished.

#### Question Presented for Review

The Applicant believes that the Sprint contract has not been terminated and so, under the plain words of the contract, it continues. The Applicant understands that the State has not terminated the contract because it is negotiating a new competitive procurement for voice telephone service for North Carolina schools and libraries.

#### Statement of Relief Sought

The Applicant respectfully asks that the Commission determine that the contract for Sprint Telephone service has not been terminated and thus is grandfathered under FCC regulations. The Applicant further requests that the PCC permit it to receive the E Rate discount for voice telecommunications service from Sprint Telephone service for Program Year 3.

Please do not hesitate to call us if there are any questions surrounding this Appeal.

Contact person:

Ms. Patricia L. Medlin  
Director of Technology  
Whiteville City Schools  
Post Office Box 609  
Whiteville, North Carolina 28472  
(910)642-4116

Respectfully submitted this 31<sup>st</sup> day of May 2001.

---

Ms. Patricia L. Medlin  
Director of Technology  
Whiteville City Schools  
Post Office Box 609  
Whiteville, North Carolina 28472

EXHIBIT #3

AFFIDAVIT OF PATRICIA MEDLIN



STATE OF NORTH CAROLINA  
COUNTY OF COLUMBUS

AFFIDAVIT

**Patricia L. Medlin**, being duly sworn, deposes and says:

1. That she is the Director of Technology for the Whiteville City School System and is responsible for the E-Rate funding program which the school system has participated in and in particular for the funding year 2000 which consist of funding request numbers **360428** and **360527**.

2. That funding request number **360527** has been approved in full and funding request number **360428** has only been partially approved and the school system has petitioned the Federal Communications Commission (Commission) to reconsider the partial approval decision.

3. That she has been involved in all matters seeking approval of funding request number **360428** and is aware that this funding request number was only partially approved because in an order issued by the Commission by Deputy Chief Mark G. Seifert the commission found the contract for services between the State of North Carolina through its department of informational Technology Services (ITS) and Carolina Telephone and Telegraph Company was ruled to have commenced on December 18, 1996 and to have terminated 48 months after that date on December 18, 2000. That as a result of this ruling, the funding was only partially approved for funding program year 2000.

4. That she is the person who filed the appeal to the Commission and in representing the school system she has been involved in all details concerning the E-Rate funding and has had numerous conversations with representative of ITS and Carolina Telephone and Telegraph Company.

5 That she received the Commission's decision on November 5, 2002, where funding request number **360428** was only partially approved. That after receiving the Commission's decision, she had a telephone conversation with Ms. Nancy Atkins and other employees of ITS for the State of North Carolina That this phone conversation was on November 20, 2002.

6. That during the telephone conversation she was made aware of for the first time that in addition to the original State Master Contract there was in fact an addendum to that contract which amended the contract by setting out that the contract terminated on June 30, 2001 in order to coincide with the actual date of the E-Rate Funding for year 2000.

7. That prior to the phone conversation on November 20, 2002 she had had numerous discussions and contacts with ITS concerning the contract but had never been informed of the existence of the addendum to the contract. That she was informed during that conversation that the addendum for unknown reasons had not been circulated to the employees of the ITS who were actually involved with the E-Rate funding program and had not even been forwarded to the Federal Communications Commissions.


8. That in order to allow the Commission to render a correct decision in its ruling she had contacted ITS on numerous occasions and made every effort possible to obtain all available and relevant material for the Commission and to furnish the same to the Commission and believed she had done so until November 20, 2002.

9. That the School System itself was not an actual party to signing or participating in any of the contract documents and the school systems only access to the contract or other relevant documents or materials was through ITS and she was not furnished with a copy of the addendum to the contract and supporting memorandum which are attached as exhibits to this appeal until November 20, 2002.

This the 22 day of November 2002.

  
PATRICIA L. MEDLIN

Sworn to and subscribed before  
me this 22 day of November, 2002.

  
Notary Public

My Commission Exp.: 10/23/04  
(NOTARY SEAUSTAMP)

**EXHIBIT #4**

**ADDENDUM TO STATE MASTER CONTRACT  
WITH ATTACHED MEMORANDUM**

WITNESSETH:

Whereas, the parties wish to amend that certain Master Agreement ("AGREEMENT") da: December 18, 1996  
by and between CAROLINA TELEPHONE AND TELEGRAPH COMPANY (herein "COMPANY") and  
Flynfancy North Carolina State Government (herein "CUSTOMER").

Now therefore, the parties hereto agree the Agreement is amended as indicated below:

QTY	DESCRIPTION	INSTALLATION CHARGES	MONTHLY RATE	EXTENDED RATE	S&E CODES
1	This extends expiration date	\$ -		\$ -	
	from December, 2000 to	\$ -		\$ -	
	June 30, 2001. All other terms	\$ -			
	and conditions remain the same.			\$ -	
				\$ -	
		\$ -		\$ -	
	SEE ATTACHED ORIGINAL			\$ -	
	MASTER CONTRACT 961218-A			\$ -	
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TOTAL INSTALLATION CHARGES

TOTAL EXTENDED MONTHLY RATE

\*All Terms and Conditions agreed to on the Master Agreement are hereby agreed to and made a part of this ADDENDUM.

CUSTOMER

Commerce - Information Tech Svcs.

BY

TITLE: Richard E. Webb-Chief Information Officer

DATE: 10-Jan-00

P. D. LaBarbera

COMPANY:

CAROLINA TELEPHONE AND TELEGRAPH COMPA

BY:

TITLE: Raymond L. Smith Director-Business Market

DATE: 2/15/2000



North Carolina  
Department of Commerce  
*Telecommunications Services*  
*Office of Information Technology Services*

James B. Hunt Jr., Governor  
Rick Carlisle, Secretary

James W. Broadwell, Director

January 12, 2000

**MEMORANDUM**

**TO:** Rick Webb

**THROUGH:** Ron Hawley  
Jim Broadwell  
Pat LaBarbara

*JB*

**FROM:** Jerry Spangler

**SUBJECT:** Signature Required on BellSouth and Sprint Contract Extension Documents for Centrex Service

Two original copies of contract extension documents for centrex service from BellSouth and Sprint are attached that require your signature.

The documents were initiated to extend the expiration dates of the original agreements to be coterminous with the end of the fiscal year of the e-rate program as required by the Universal Service Administrative Company, Schools and Libraries Division. All other rates, services, terms, and conditions remain the same as specified in the original agreements. The documents have been marked where your signature is required.

Please return the two signed copies of the addendum to me.

Thank you



**SPRINT ADDENDUM**

**AGREEMENT NUMBER 961218-A**